

**CITY OF NEWPORT BEACH PLANNING COMMISSION MINUTES**  
**Council Chambers – 100 Civic Center Drive**  
**Thursday, April 18, 2013**  
**REGULAR MEETING**  
**6:30 p.m.**

**I. CALL TO ORDER** - The meeting was called to order at 6:30 p.m.

**II. PLEDGE OF ALLEGIANCE** – Secretary Ameri

**III. ROLL CALL**

PRESENT: Ameri, Brown, Hillgren, Kramer, Myers, Toerge, and Tucker  
ABSENT: None

Staff Present: Brenda Wisneski, Deputy Community Development Director; Leonie Mulvihill, Assistant City Attorney; Tony Brine, City Traffic Engineer; Marlene Burns, Administrative Assistant; Ben Zdeba, Assistant Planner; Gregg Ramirez, Senior Planner; Melinda Whelan, Assistant Planner; Leilani Brown, City Clerk; Makana, Assistant Planner; Jim Campbell, Principal Planner; and Jaime Murillo, Associate Planner

**IV. PUBLIC COMMENTS**

Chair Toerge invited those interested in addressing the Planning Commission to do so at this time.

Jim Mosher commented on the lack of warning lights for public speakers and suggested that the Planning Commission direct staff to install a big clock on the dais so that speakers can see the time they have left to speak. He urged the Planning Commission to not believe everything it hears and referenced the Uptown Newport project as an example relative to their incorporation of the commercial airport area into the Newport Mesa School District.

There being no others wishing to address the Planning Commission, Chair Toerge closed the public comments portion of the meeting.

**V. REQUEST FOR CONTINUANCES** - None

**VI. CONSENT ITEMS**

**ITEM NO. 1 MINUTES OF April 3, 2013**

**Recommended Action:** Approve and file

Interested parties were invited to address the Planning Commission on this item. There was no response and Chair Toerge closed public comments.

**Motion** made by Commissioner Tucker and seconded by Commissioner Brown and carried (6 – 1), to approve the minutes of April 3, 2013, as amended.

AYES: Ameri, Brown, Hillgren, Kramer, Toerge, and Tucker  
NOES: None  
ABSTENTIONS: Myers

**VII. PUBLIC HEARING ITEMS****ITEM NO. 2     1420 W OCEAN FRONT ALTERNATIVE SETBACK (PA2013-045)**  
**Site Location: 1420 West Ocean Front**

Assistant Planner Ben Zdeba provided a presentation addressing location, surrounding properties, existing conditions, non-conforming elements, allowance for an alternative setback determination, required and proposed setbacks, buildable area, and recommendations.

Chair Toerge opened the public hearing and invited those wishing to address the Planning Commission on this item to do so at this time.

Chris Brandon of Brandon Architects, Inc. explained the rationale for requesting alternative setbacks and offered to respond to questions.

The property owner of the eight-unit apartment complex at 104 15<sup>th</sup> Street expressed concerns regarding the proposed setbacks as well as the vacation of the alley and provided City Council Resolution 91-4 for the Planning Commission to review.

There being no others wishing to address the Planning Commission, Chair Toerge closed the public hearing.

Assistant City Attorney Leonie Mulvihill referenced the vacation of the alley, noting that it was subject to certain conditions. She noted the need for Public Works to review the issue and suggested the possibility of continuing the item to allow Public Works to make appropriate determinations.

City Traffic Engineer Tony Brine indicated that he is not familiar with the matter and noted the need to have it reviewed by his department.

Discussion followed regarding clarification regarding applicability of the alley issue to the subject property.

Chair Toerge reopened the public hearing.

Chris Matarese, property owner of 1420 West Ocean Front, stated that the issue of the alley is separate from the setback determination and felt there is no need for a continuance. He stated that the City abandoned the alley and gave one-half to 1416 West Ocean Front and parts of the other half to him and his neighbor. He reiterated that the alley is a separate issue and that continuing the matter would be a waste of resources.

In response to Commissioner Tucker's inquiry regarding the setback request, Mr. Matarese addressed orientation of the property and noted the reasons for requesting alternative setbacks.

In response to Commissioner Tucker's inquiry regarding parking access, Mr. Brine reported that access to the property could function with a four-foot setback.

The adjacent property owner of 104 15<sup>th</sup> Street responded to an inquiry from Chair Toerge noting that his property is developed with eight units. He stated that the alley has not been vacated by the City as it has not met the necessary conditions.

Mr. Matarese indicated speaking with the City and the title company and that both indicated that the alley had been vacated. He questioned the relevancy of the issue.

There being no others wishing to address the Planning Commission, Chair Toerge closed the public hearing.

In response to an inquiry from Vice Chair Hillgren, Mr. Zdeba reported that a ten-foot setback is called out across the block and there will be a net gain to the benefit of the boardwalk.

Senior Planner Gregg Ramirez reported that staff believed maintaining ten-feet along the boardwalk would be most appropriate and that the standard side setback would be four feet for the properties.

Secretary Ameri addressed the building orientation and the related definitions of the various setbacks.

Mr. Ramirez reiterated that maintaining a ten-foot setback along the boardwalk would be most appropriate.

Secretary Ameri felt that the setback definitions should be changed considering the orientation of the building, itself.

**Motion** made by Commissioner Tucker and seconded by Commissioner Kramer to adopt a resolution approving Setback Determination No. SA2013-002 as recommended by staff.

Chair Toerge indicated he does not see a down side to the three-foot setback or negative impacts to adjacent property owners. In an effort to create parity, he made a substitute motion.

**Substitute Motion** made by Chair Toerge and seconded by Secretary Ameri and carried (6 – 1), to adopt a resolution approving Setback Determination No. SA2013-002 with a three-foot rear-yard setback the northern property line.

Deputy Community Development Director Brenda Wisneski reported that staff reviewed the Resolution regarding the alley vacation distributed by the public speaker and has no issues of concern and maintains the recommendations.

AYES: Ameri, Brown, Hillgren, Myers, Toerge, and Tucker  
NOES: Kramer

Secretary Ameri commented on the importance of having clear definitions of setback locations and directions.

**ITEM NO. 3 441 OLD NEWPORT MEDICAL OFFICE BUILDING (PA2011-056)**  
**Site Location: 441 Old Newport Boulevard**

Deputy Community Development Director Wisneski introduced the item and addressed previous consideration by the Planning Commission, appeal of the Planning Commission's decision to the City Council and revisions made to the project update to accommodate additional parking. Therefore the original request has been modified to only require approval of off-site parking.

Assistant Planner Melinda Whelan provided a presentation addressing the proposed use, parking requirements, proposed off-site parking to be established at 445 Old Newport Boulevard, access and circulation, parking lot improvements, project-specific conditions of approval, private parking agreement, and recommendations.

Discussion followed regarding the appropriate signors of the application since the adjacent property is in bankruptcy, the terms of the parking agreement, the reciprocal easement agreement and lack of an estoppel certificate.

Ms. Mulvihill addressed consideration of duration as long as the use is in place.

Ensuing discussion pertained to the reciprocal easement agreement and the non-exclusive nature of the easement and the possibility of double counting the spaces.

Ms. Wisneski indicated that staff evaluates the property and noted that per the conditions; the use will occur if the additional parking spaces become available off-site. If that does not occur, the use cannot be established. If the parking spaces are no longer available, the property owner is required to notify the City and establish alternative parking solutions.

Ms. Wisneski addressed the conditions of approval addressing the matter and noted the requirement to notify the City if the off-site parking spaces are not longer available.

Commissioner Tucker suggested the need for the reciprocal easement agreement to be exclusive to ensure availability of the additional parking spaces.

Commissioner Myers addressed previous parking studies, acknowledged the measures taken by the applicant and inquired regarding provisions for signage directing people to adjacent parking.

Ms. Whelan reported that the subject parking lots will be required to meet current code requirements related to signage and circulation. She added that there will be directional signage provided in both parking lots.

Commissioner Tucker commented on the possibility of assigning employee parking to the off-site lot so that customers will not need to park off-site.

Vice Chair Hillgren addressed the terms of the agreement and noted that the tenant will need to be made aware of the parking agreement.

Ms. Mulvihill noted that conditions could be added as suggested.

Chair Toerge invited the applicant to address the Planning Commission.

Ali Parvaneh, Attorney representing the applicant, noted the importance of identifying the nature of the bankruptcy of the adjacent property and reported that it has been in Chapter 11 (reorganization) since 2006 and that it will be fully independent of any effect or rights the adjacent property owner may be able to exercise. He noted that the property is not in bankruptcy, but rather the estate of the property owner.

Interested parties were invited to address the Planning Commission on this matter.

Richard Haskell, expressed concerns regarding problems with parking. He felt that people will not park off-site and that once the medical use is established, it will not move. He stated that the existing adjacent property is an eye-sore and stated he would have no objection to the City demolishing the existing building and making it into a parking lot.

Dr. Reni, expressed concerns regarding utilization of the property where off-site parking is being proposed. He felt that when the property is out of bankruptcy, someone will purchase and redevelop it. He indicated that the property is an eye-sore and a fire hazard. He felt that the proposed plan is unrealistic.

Sandy Haskell expressed concerns with the proposed plan and the condition of the property where off-site parking is being proposed.

Ali Parvaneh stated that his client has first right of refusal and is taking a risk that the property will be developed. He indicated that the Conditional Use Permit will allow his client to clean up the property.

There being no others wishing to address the Planning Commission, Chair Toerge closed the public hearing.

Chair Toerge noted there are circumstances where the Zoning Code allows mechanisms to facilitate parking where reasonable alternatives can be provided. He felt that there is a high degree of uncertainty as to how the property at 445 Old Newport Boulevard will be developed in the future.

Commissioner Kramer indicated that he finds the application inefficient and expressed concerns with the existing uncertainty.

**Motion** made by Chair Toerge and seconded by Commissioner Kramer to adopt a resolution to deny Conditional Use Permit No. UP2011-011.

Vice Chair Hillgren felt that the matter depends on the dissolution of the adjacent property and that there is a lack of a management plan regarding the off-site parking. He felt that the ultimate occupancy of the building needs to be considered, that there have been positive steps taken but that they are not supportable.

Assistant City Attorney Mulvihill clarified that the motion would include adoption of a Resolution to deny the Conditional use Permit.

The motion carried (6 – 1).

AYES: Brown, Hillgren, Kramer, Myers, Toerge, and Tucker  
NOES: Ameri

**ITEM NO. 4 KNIGHT RESIDENCE (PA2013-044) AND OU RESIDENCE (PA2013-043)**  
**Site Location:** 312 Hazel Drive and 316 Hazel Drive

Assistant Planner, Makana Nova, presented details of the report addressing location, surrounding properties, existing conditions, topography of the surrounding properties, history of the subject properties, development limits previously established, related policies and site plans. She addressed building permit history, accessory structures and current determinations. Ms. Nova reported that the Knight building permit was consistent with a previous determination by the Planning Director, but it did not reflect applicable General Plan and Coastal Land Use Plan policies regarding canyon development standards. She also indicated that the Ou building permit limited the development to stringlines with the adjacent development to the north and the anticipated development on the Knight property to the south. She noted that both building permits have expired and staff is unable to authorize development to the extent previously permitted due to it being inconsistent with applicable General Plan and Coastal Land Use Plan policies.

Principal Planner, Jim Campbell, provided an overview of the applicable General Plan and Coastal Land Use Plan policies and noted that the goal was to ensure that development respects the natural landforms including canyons. He presented the recommendation as listed in the report, discussed the establishment of canyon development setbacks, when stringlines are used, expiration of previous building permits, and an alternate recommendation for the Planning Commission to consider. He stated that staff does not believe that the previously issued building permits are consistent with the applicable policies.

In response to an inquiry from Chair Toerge about the similarity of stringline determinations along Ocean Boulevard, Mr. Campbell reported that before the current Zoning Code was adopted, stringlines were not directly considered on coastal bluffs for conformance with the applicable General Plan and Coastal Land Use Plan policies. It was a common analytical tool but not a regulatory standard as the City's policies for coastal bluffs differ from those for coastal canyons in that stringlines are not referenced for bluff development.

Commissioner Kramer inquired whether the applicants were given the opportunity to seek an extension of the permits prior to expiration.

Ms. Nova indicated that they were notified multiple times of the impending expiration of the permits. In one case, the applicant for 316 Hazel Drive (Dr. Ou) decided to cancel the permit due to economic considerations. In the case of 312 Hazel Drive, building permits expired.

Commissioner Brown wondered if there was anything unusual in the case of the permit cancellation.

Ms. Nova reported that the applicant indicated that he chose not to proceed with construction because of the economy.

Commissioner Brown noted that there were conditions that existed when the permits were in force but those conditions no longer exist.

Ms. Nova reported that interim Criterion No. 7 referenced in the Planning Director's letter is no longer in effect. The General Plan and Coastal Land Use Plan policies were in existence, but were not identified in the determination letter by the Planning Director. The policies remain unchanged and are applicable today.

Commissioner Tucker noted that the Criterion No. 7 language as adopted in Ordinance No. 2007-003 required consistency with the General Plan.

In response to Commissioner Tucker's inquiry, Mr. Campbell affirmed Commissioner Tucker's statement and addressed interim Criteria No. 7 regarding landform alteration and noted that this interim policy was intended to serve as a bridge between the General Plan policies and a Zoning Code and the Coastal Implementation Plan. Mr. Campbell noted that Criteria No. 7 should not be interpreted to authorize development that could be inconsistent with General Plan or Coastal Land Use Plan policies.

Discussion followed with Commission Tucker and Mr. Campbell regarding the language of the General Plan and Coastal Land Use Plan policies. Mr. Tucker asked if the establishment of a predominant line of existing development, as identified in the policy, should be a canyon development setback regulatory program or if the setbacks should be established on a lot by lot basis. Mr. Campbell responded indicating the intention of staff and the General Plan/Local Coastal Program Implementation Committee to establish a setback on a block basis based upon the predominant line of existing development and not on a property-by-property basis using stringlines. He noted that it is an ongoing effort that it would be completed with the Coastal Implementation Plan.

Mr. Tucker asked if a new regulation took the place of Criteria No. 7 when the Zoning Code was adopted.

Mr. Campbell replied that there was no specific regulation adopted to take the place of Criteria No. 7 for the canyons but affirmed the need for consistency with the applicable General Plan and Coastal Land Use Plan policies.

Mr. Tucker inquired about construction on adjacent lots that may have changed the determinations from the time the previous Planning Director's determination was made.

Mr. Campbell noted that there had been no additional construction on adjacent properties in this intervening time period.

Mr. Tucker inquired how stringlines could further restrict development along the canyon and noted that the stringline method leaves property owners at the fate of property owners with the most recent construction.

Mr. Campbell responded that few property owners opt to construct smaller residences that would result in a more restrictive development limit over time. Typically, larger homes are constructed, which could result in development further down the canyon over time.

Commissioner Tucker indicated that he did not understand how development could get bigger and bigger as a result of applying stringlines.

Vice Chair Hillgren inquired about the City's policy for the protection of visual resources and requested clarification.

Ms. Nova reported that it is the City's policy to protect views from public view points and public rights-of-way but not private views on private property. She discussed the existing public views of Buck Gully.

Vice Chair Hillgren commented on the various ways the predominant line of existing development might be enforced and wondered if it would apply in a vertical or horizontal dimension to the proposed project.

Ms. Nova responded that the recommended stringline aligns roughly with the topographic contours of the property and it would apply in a horizontal and vertical fashion, and does not allow for landform alteration beyond the established stringlines. Mr. Campbell noted that the methods chosen to identify a predominant line might depend on existing development patterns, what areas need to be protected and possibly the vantage point. He added that, in some cases, a horizontal dimension or a specific contour might be most appropriate to determine the appropriate development limit to achieve the goal of protecting the visual resource or sensitive environments. In this area, he reported that the revised recommendation (stringline) closely aligns to the topography of the canyon. It will bring development down the canyon further than existing development, but a portion of the property will be maintained in its natural form.

Vice Chair Hillgren asked how many homes are along Hazel Drive that back to Buck Gully and if the Planning Commission would be considering an average for a specific number of homes.

Mr. Campbell responded that staff looks for patterns in the existing development. The subject properties are within a transition area between two differing development patterns where the slope is steeper and more recently developed properties to the south that cascade further down the slope and have larger building envelopes. Properties to the north have a much smaller and narrower development pattern and steeper slopes. Staff then reviews the properties to identify parity between these blocks.

Vice Chair Hillgren inquired if Mr. Campbell could articulate a policy from this analysis to which Mr. Campbell agreed that an appropriate policy could be formed in time.

Chair Toerge addressed existing development to the south and noted the development of gardens, pathways, and retaining walls that exceed the recommended accessory stringline. He inquired if those structures are considered accessory structures and what development would be allowed beyond the accessory structure stringline.

Mr. Campbell presented photographs showing development along Hazel Drive including the location of existing accessory structures. He noted that some accessory structures are located beyond stringlines and some do not require permits. Currently there are no regulations that would provide guidance as to what types of structures would be allowed further down the canyon beyond stringlines that might be applied.

Discussion followed with Commissioner Toerge and Mr. Campbell regarding accessory structure limits and the possibility of developing beyond accessory structure limits, the establishment of policies and applicable codes that may affect areas of improvement and the possibility of allowing development of other elements (i.e., gardens) down in the gully. Development further down the canyon could result in impacts to sensitive habitat and additional jurisdictional areas.

Chair Toerge invited the applicant to address the Planning Commission at this time.

Deborah M. Rosenthal, representing Diane Knight, owner of the property at 312 Hazel Drive, reported that this has been a difficult journey and hoped that the matter will be resolved. She reported preparing and distributing copies of a PowerPoint presentation and she provided a brief history of the property including previous building permits and findings, subsequent decisions and the establishment of lines of development for structures. She articulated Ms. Knight's request to reissue the same building permit as previously granted. She reported that there have been no changes in governing policies between 2008 and 2013, that there is no predominant line of existing development that has been adopted, and that the Local Coastal Program implementing plan has not been adopted. She highlighted property specifications, the remodel of surrounding homes, and location and size of the lot, and noted that the previously approved design in 2007 avoided environmentally sensitive areas. Ms. Rosenthal indicated that most of the homes to the south along Buck Gully include development extending into the gully and presented photographs of surrounding properties. She noted that the topography differs among the lots along Haze Drive; the term "development", as defined by the Coastal Act and the City, extends into Buck Gully and includes any form of land alteration and that development extends deep into the canyon for many properties in Buck Gully.

Ms. Rosenthal continued presenting views of other developments and properties in the area and stated that the requested development line is in accordance with the previously-issued building permits, adding that they were considered consistent with the General Plan and Coastal Land Use Plan policies. She mentioned that the City's definition of accessory structures includes pools and that much of the existing development would not be allowed under that interpretation. Ms. Rosenthal addressed Criteria No. 7, specifically, relative to determining consistency with the General Plan and stressed that the project was found to be consistent with Criteria No. 7 and therefore, the project was found consistent with the General Plan and Coastal Land Use Plan canyon development policies. She reiterated her request and presented several possible options. She addressed the existing development limits previously approved, accessory structures, varying views, challenges with using the stringline approach, existing topography, and other development patterns in the area.

In response to Vice Chair Hillgren's inquiry regarding topography, Ms. Rosenthal reported that their request considers the existing development pattern of surrounding lots, bearing in mind the severe topography to the

north, lot sizes and relative distances from Hazel Drive. She also noted that 312 Hazel is a transitional lot more similar in topography to the lots to the south than the lots to the north.

Vice Chair Hillgren asked if the natural slope of Hazel Drive falls downward from East Coast Highway toward the ocean.

Ms. Rosenthal reported that she did not feel the slope of Hazel Drive made much difference, but rather, that Buck Gully was the defining feature in the topography.

Dr. Ou, property owner of 316 Hazel Drive, reported that his permit expired and that he was advised that it would not be reinstated. He asked if there has been any change in the existing codes and stated that the same staff that issued the permit informed him that it cannot be reissued.

Interested parties were invited to address the Planning Commission on this matter.

Gloria Tomer, owner of 320 Hazel, stated that she and her husband bought the house with an ocean view and expressed concerns over increased development in the area. She hoped that her view or access will not be negatively impacted.

Michelle Brown, realtor for Dr. Ou and resident of Corona Del Mar, addressed the risk of views being blocked by development and commented on the inequality of establishing stringlines based on neighbors existing development and the efforts and costs expended by the applicants in this matter. She urged the Planning Commission to establish equitable guidelines.

Jim Mosher addressed Coastal Land Use Plan policies and the constraints and lack of consistency with stringlines based on development on adjacent lots. He commented on the Coastal Commission's definition of "stringline" and felt that topography is not being respected with the revised recommendation by staff. He referenced the Coastal Act, the need for permits to remove vegetation and the need for consistency with the Zoning Code in effect in 1977 in order to qualify for a categorical exclusion order.

There being no others wishing to address the Planning Commission, Chair Toerge closed the public hearing.

Commissioner Kramer addressed the difficulty of the case and noted that he felt for the applicant. He then noted the Planning Commission's responsibility to implement the approved policy of the City Council rather than to suggest policy changes. He indicated his belief that the policy is not the best; however, the language is clear as to how it should be implemented.

Commissioner Tucker felt that the matter is unclear, that the language of the policy is inconsistent. He addressed setbacks, the predominant line of development, and related inconsistencies. He noted that staff had previously made a decision and found the development limit consistent with Criteria No. 7, and therefore, the General Plan policies. Thus, the City should be held to a consistent determination on the same lot. Commissioner Tucker noted that nothing has changed to make the previous determination invalid.

In response to an inquiry from Vice Chair Hillgren, Commissioner Tucker addressed considering similarly-situated structures, not just directly adjacent properties. He noted that the applicants' plans were previously approved and that nothing has changed to affect the previous determination that would make him think that this prior determination was erroneous.

In response to an inquiry from Commissioner Kramer, Ms. Mulvihill clarified the approach considering that there are two properties. She also stated that when the development determination was made previously, it was made clear that it was being done under an interim ordinance, which would be terminated as soon as the Zoning Code was adopted and updated. She stated that it is staff's and the City Attorney's office position that to go beyond adjacent corners of existing structures, is not consistent with the General Plan or Coastal Land Use Plan.

Discussion followed regarding the application process for considering the two properties together as a whole.



Chair Toerge acknowledged the difficulty of the issues with this case and commented on the previous determination and the need for fairness to the community and consistency. He acknowledged that times change, codes change, and that development permits have time limits on them. He requested additional vertical view analysis of the two properties with proposed development. Chair Toerge identified that he would not have supported the prior Planning Director's determination had it come before the Planning Commission. Based on his review of the application, he identified that he felt staff's recommendation would be the most fair to the community.

**Motion** made by Chair Toerge and seconded by Commissioner Kramer and carried (6 – 1), to accept staff's recommendation and adopt a resolution, modifying the decision of the Community Development Director establishing canyon development stringlines for principal and accessory structures at 312 Hazel Drive pursuant to General Plan Policy NR23.6 and Coastal Land Use Plan Policy 4.4.3-18; and adopt a resolution, modifying the decision of the Community Development Director and establishing canyon development stringlines for principal and accessory structures at 316 Hazel Drive pursuant to General Plan Policy NR23.6 and Coastal Land Use Plan Policy 4.4.3-18, incorporating the correct meeting date into the resolutions.

Vice Chair Hillgren expressed his hope that the matter will result in an appropriate policy to address this matter and asked for a summary of an appropriate policy in a couple of sentences. He acknowledged the goal to be judicious about where development occurs and that he could not come to any conclusion as to how the prior development determinations were made.

Chair Toerge addressed an upcoming meeting of a General Plan Implementation Plan Committee where canyon development policies will be addressed.

AYES: Ameri, Brown, Hillgren, Kramer, Myers, and Toerge  
NOES: Tucker

## RECESS AND RECONVENE

Chair Toerge called for a recess at 9:29 p.m. The assembly reconvened at 9:40 p.m. with all Members, present.

### ITEM NO. 5 2014-2021 HOUSING ELEMENT UPDATE (PA2012-104) Site Location: Citywide

Chair Toerge reported receiving late correspondence regarding the aforementioned item and stated that he did not have sufficient time to review all of the information provided.

**Motion** made by Commissioner Kramer, to continue the item until the next regular meeting of the Planning Commission.

Commissioner Tucker reported reviewing the information and suggested discussing the issue.

Associate Planner Jaime Murillo commented on the need to maintain the timeline for consideration of the item by other groups and jurisdictions in order to meet the required deadline and the consequences of not meeting the deadline.

Ms. Mulvihill reported reviewing the supplemental communication and stated that the City Attorney's office does not feel that there is anything in the Building Industry Association letter that would prevent the Planning Commission from taking action at this time.

Chair Toerge commented on the importance of establishing a policy that information to be considered at a public hearing needs to be submitted in a fashion that would allow the Planning Commission to review it.

Secretary Ameri seconded the motion on the floor.

**Substitute Motion** made by Commissioner Tucker, to have a discussion on this item and then consider the issue of continuance. Vice Chair Hillgren seconded the substitute motion which carried (4 – 3).

AYES: Brown, Hillgren, Toerge, and Tucker  
NOES: Ameri, Kramer, and Myers

Commissioner Tucker clarified the content of the email received and noted the need for providing housing for all segments of the community through inclusionary zoning. He inquired regarding Regional Housing Need Assessment (RHNA) requirements and their application to the Housing Element.

Mr. Murillo noted that the City was able to show how it is accommodating regional housing needs and addressed RHNA carry-overs through housing cycles. He addressed creation of an overlay in the airport area and creation of a zoning designation that accommodates lower-income needs.

Discussion followed regarding the existing unmet housing needs, RHNA differences between planning periods, and programs in place to meet existing and projected housing needs.

In response to Commissioner Tucker's inquiry, Mr. Murillo noted that the General Plan sets forth planning for a thirty-year period.

Ensuing discussion followed regarding the flexibility of the Inclusionary Housing Ordinance.

Interested parties were invited to address the Planning Commission on this matter.

Mike Balsamo, BIA of Orange County, expressed support for housing for all segments of the community but stated that inclusionary zoning is not a free-market solution and highlighted points expressed in his letter. He reported that inclusionary zoning is not a requirement for the approval of a jurisdiction's Housing Element. He addressed the RHNA goal and felt that inclusionary housing is a barrier towards the production of affordable housing and listed other challenges with inclusionary zoning as well as a related on-going legal case. He suggested that the City remove the mandate and allow for a more fluid, voluntary process.

Vice Chair Hillgren commented on the challenges with fees, but questioned how affordable housing development could be constructed without inclusionary zoning due to high land costs in the City.

In response to the inquiry from Vice Chair Hillgren, Mr. Balsamo listed actions that could be taken to facilitate the process and provide incentives for development.

Commissioner Tucker addressed the difficulties in expediting approvals due to CEQA and other regulatory requirements and inquired regarding the benefits of the density bonus.

Mr. Balsamo commented that State law sets forth the density bonus for a certain level of affordability.

Jim Mosher commented on the interchanging of "elderly" and "senior" and suggested using the latter throughout the Housing Element. He noted that development has been restricted in the City by the "Green Light" provision and commented about that restriction not being included within the Housing Element. Additionally, he indicated that the old City Hall parcel was not included within the element as the possible location of a future housing opportunity.

There being no others wishing to address the Planning Commission, Chair Toerge closed the public hearing.

Discussion followed regarding typographical errors within the document.

Commissioner Kramer withdrew his original motion.

**Motion** by Commissioner Tucker and seconded by Commissioner Brown to recommend the City Council authorize submission of the draft of the 2014-2021 Housing Element Update to the Department of Housing and Community Development.

Vice Chair Hillgren asked Commissioner Tucker if he would consider adding a recommendation that the City

Council look at the fees charged to ensure consistency with the market. He indicated the desire to ensure that fees do not keep the City from generating more housing units.

Mr. Murillo commented on inclusionary housing fees noting that they are adjusted annually based on the changes of new home prices.

Discussion followed regarding a constraints analysis that was prepared in conjunction with the adoption of the ordinance and also included in the Housing Element, housing program in place that requires periodic review of the Inclusionary Housing Ordinance to ensure it does not result in development constraints, and the flexible options for compliance with the ordinance.

Commissioner Tucker stated he would not agree to include additional language to his motion.

The motion carried (7 – 0).

AYES: Ameri, Brown, Hillgren, Kramer, Myers, Toerge, and Tucker  
NOES: None

## **VIII. STAFF AND COMMISSIONER ITEMS**

### **ITEM NO. 6 MOTION FOR RECONSIDERATION - None**

### **ITEM NO. 7 COMMUNITY DEVELOPMENT DIRECTOR'S REPORT**

Ms. Wisneski reported on a recent City Council study session where lot mergers were considered and the City Council's direction to have the Planning Commission reconsider the issue and potential regulations affecting residential lot mergers. In addition, she announced the upcoming Civic Center grand-opening celebration.

It was suggested that the Planning Commissioners review the Council meetings where lot mergers were discussed in order to obtain clarification of the City Council's expectations. Staff would provide the Commissioners links to the related Council meetings.

### **ITEM NO. 8 ANNOUNCEMENTS ON MATTERS THAT THE PLANNING COMMISSION MEMBERS WOULD LIKE PLACED ON A FUTURE AGENDA FOR DISCUSSION, ACTION, OR REPORT**

Brief discussion ensued regarding items for future agendas and the dates of upcoming elections.

### **ITEM NO. 9 REQUESTS FOR EXCUSED ABSENCES**

Commissioner Kramer reported that he will be gone the entire month of June.

Commissioner Tucker indicated that he will not be attending the Planning Commission meeting of May 9, 2013.

## **IX. ADJOURNMENT**

There being no further business to come before the Planning Commission, the meeting was adjourned at 10:28 p.m.

The next regular meeting of the Planning Commission is scheduled for May 9, 2013, at 6:30 p.m.

The agenda for the Regular Meeting was posted on April 12, 2013, at 3:25 p.m., on the City Hall Bulletin Board located in the entrance of the Council Chambers at 100 Civic Center Drive.

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Michael Toerge, Chairman

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Fred Ameri, Secretary

DRAFT

May 9, 2013

Secretary Ameri addressed the building orientation and the related definitions of the various setbacks.

Mr. Ramirez reiterated that maintaining a ten-foot setback along the boardwalk would be most appropriate.

Secretary Ameri felt that the setback definitions should be changed considering the orientation of the building, itself.

**Motion** made by Commissioner Tucker and seconded by Commissioner Kramer to adopt a resolution approving Setback Determination No. SA2013-002 as recommended by staff.

Chair Toerge indicated he does not see a down side to the three-foot setback or negative impacts to adjacent property owners. In an effort to create parity, he made a substitute motion.

**Substitute Motion** made by Chair Toerge and seconded by Secretary Ameri and carried (6 – 1), to adopt a resolution approving Setback Determination No. SA2013-002 with a three-foot rear-yard setback the northern property line.

Deputy Community Development Director Brenda Wisneski reported that staff reviewed the Resolution regarding the alley vacation distributed by the public speaker and has no issues of concern and maintains the recommendations.

AYES: Ameri, Brown, Hillgren, Myers, Toerge, and Tucker  
NOES: Kramer

Secretary Ameri commented on the importance of having clear definitions of setback locations and directions.

**ITEM NO. 3 441 OLD NEWPORT MEDICAL OFFICE BUILDING (PA2011-056)**  
**Site Location: 441 Old Newport Boulevard**

Deputy Community Development Director Wisneski introduced the item and addressed previous consideration by the Planning Commission, appeal of the Planning Commission's decision to the City Council and revisions made to the project update to accommodate additional parking. Therefore the original request has been modified to only require approval of off-site parking.

Assistant Planner Melinda Whelan provided a presentation addressing the proposed use, parking requirements, proposed off-site parking to be established at 445 Old Newport Boulevard, access and circulation, parking lot improvements, project-specific conditions of approval, private parking agreement, and recommendations.

Discussion followed regarding the appropriate signors of the application since the adjacent property is in bankruptcy, the terms of the parking agreement, the reciprocal easement agreement and lack of an estoppel certificate.

Ms. Mulvihill addressed consideration of duration as long as the use is in place.

Ensuing discussion pertained to the reciprocal easement agreement and the non-exclusive nature of the easement and the possibility of double counting the spaces. Specifically, Commissioner Tucker was concerned that if the land at 445 Old Newport Boulevard were developed for office use, the owner of that new building would have the right to use the parking spaces on that property that the 441 Building was also planning to use.

Ms. Wisneski indicated that staff evaluates the property and noted that per the conditions; the use will occur if the additional parking spaces become available off-site. If that does not occur, the use cannot be established. If the parking spaces are no longer available, the property owner is required to notify the City and establish alternative parking solutions.

Ms. Wisneski addressed the conditions of approval addressing the matter and noted the requirement to notify the City if the off-site parking spaces are no longer available.

Commissioner Tucker suggested the need for the reciprocal easement agreement to be exclusive to ensure availability of the ~~Off-site~~additional parking spaces that were being relied upon in allowing medical office use.

Commissioner Myers addressed previous parking studies, acknowledged the measures taken by the applicant and inquired regarding provisions for signage directing people to adjacent parking.

Ms. Whelan reported that the subject parking lots will be required to meet current code requirements related to signage and circulation. She added that there will be directional signage provided in both parking lots.

Commissioner Tucker suggested instead of signage that the off-site parking should be used~~commented on the possibility of assigning for~~ employee parking ~~to the off-site lot~~ so that customers would~~will~~ not need to park off-site.

Vice Chair Hillgren addressed the terms of the agreement and noted that the tenant will need to be made aware of the parking agreement.

Ms. Mulvihill noted that conditions could be added as suggested.

Chair Toerge invited the applicant to address the Planning Commission.

Ali Parvaneh, Attorney representing the applicant, noted the importance of identifying the nature of the bankruptcy of the adjacent property and reported that it has been in Chapter 11 (reorganization) since 2006 and that it will be fully independent of any effect or rights the adjacent property owner may be able to exercise. He noted that the property is not in bankruptcy, but rather the estate of the property owner.

Interested parties were invited to address the Planning Commission on this matter.

Richard Haskell, expressed concerns regarding problems with parking. He felt that people will not park off-site and that once the medical use is established, it will not move. He stated that the existing adjacent property is an eye-sore and stated he would have no objection to the City demolishing the existing building and making it into a parking lot.

Dr. Reni, expressed concerns regarding utilization of the property where off-site parking is being proposed. He felt that when the property is out of bankruptcy, someone will purchase and redevelop it. He indicated that the property is an eye-sore and a fire hazard. He felt that the proposed plan is unrealistic.

Sandy Haskell expressed concerns with the proposed plan and the condition of the property where off-site parking is being proposed.

Ali Parvaneh stated that his client has first right of refusal and is taking a risk that the property will be developed. He indicated that the Conditional Use Permit will allow his client to clean up the property.

There being no others wishing to address the Planning Commission, Chair Toerge closed the public hearing.

Chair Toerge noted there are circumstances where the Zoning Code allows mechanisms to facilitate parking where reasonable alternatives can be provided. He felt that there is a high degree of uncertainty as to how the property at 445 Old Newport Boulevard will be developed in the future.

Commissioner Kramer indicated that he finds the application inefficient and expressed concerns with the existing uncertainty.

**Motion** made by Chair Toerge and seconded by Commissioner Kramer to adopt a resolution to deny Conditional Use Permit No. UP2011-011.

Vice Chair Hillgren felt that the matter depends on the dissolution of the adjacent property and that there is a lack of a management plan regarding the off-site parking. He felt that the ultimate occupancy of the building needs to be considered, that there have been positive steps taken but that they are not supportable.

Commissioner Tucker noted that the Criterion No. 7 language as adopted in Ordinance No. 2007-003 required consistency with the General Plan.

In response to Commissioner Tucker's inquiry, Mr. Campbell affirmed Commissioner Tucker's statement and addressed interim Criteria No. 7 regarding landform alteration and noted that this interim policy was intended to serve as a bridge between the General Plan policies and a Zoning Code and the Coastal Implementation Plan. However, Mr. Campbell noted that Criteria No. 7 should not be interpreted to authorize development that could be inconsistent with General Plan or Coastal Land Use Plan policies.

Discussion followed with Commissioner Tucker and Mr. Campbell regarding the language of the General Plan and Coastal Land Use Plan policies. Mr. Tucker asked if the establishment of a predominant line of existing development, as identified in the policy, was meant to refer to ~~should be~~ a canyon development setback regulatory program or if the policy language meant that the setbacks should be established on a lot by lot basis. Mr. Campbell responded indicating the intention of staff and the General Plan/Local Coastal Program Implementation Committee to establish a setback on a block basis based upon the predominant line of existing development and not on a property-by-property basis using stringlines. Commissioner Tucker noted the language was susceptible to a different interpretation. He ~~Mr. Campbell~~ noted that such a program does not exist but it is an ongoing effort that it would be completed with the Coastal Implementation Plan.

Mr. Tucker asked if a new regulation took the place of Criteria No. 7 when the Zoning Code was adopted.

Mr. Campbell replied that there was no specific regulation adopted to take the place of Criteria No. 7 for the canyons but affirmed the need for consistency with the applicable General Plan and Coastal Land Use Plan policies.

Mr. Tucker inquired about construction on adjacent lots that may have changed the determinations from the time the previous Planning Director's determination was made.

Mr. Campbell noted that there had been no additional construction on adjacent properties in this intervening time period.

Mr. Tucker inquired how stringlines could further restrict development along the canyon and noted that the stringline method leaves property owners at the fate of adjoining property owners with the most recent construction.

Mr. Campbell responded that few property owners opt to construct smaller residences that would result in a more restrictive development limit over time. Typically, larger homes are constructed, which could result in development further down the canyon over time.

Commissioner Tucker indicated that he did not understand how development could get bigger and bigger as a result of applying stringlines.

Vice Chair Hillgren inquired about the City's policy for the protection of visual resources and requested clarification.

Ms. Nova reported that it is the City's policy to protect views from public view points and public rights-of-way but not private views on private property. She discussed the existing public views of Buck Gully.

Vice Chair Hillgren commented on the various ways the predominant line of existing development might be enforced and wondered if it would apply in a vertical or horizontal dimension to the proposed project.

Ms. Nova responded that the recommended stringline aligns roughly with the topographic contours of the property and it would apply in a horizontal and vertical fashion, and does not allow for landform alteration beyond the established stringlines. Mr. Campbell noted that the methods chosen to identify a predominant line might depend on existing development patterns, what areas need to be protected and possibly the vantage point. He added that, in some cases, a horizontal dimension or a specific contour might be most appropriate to determine the appropriate development limit to achieve the goal of protecting the visual resource or sensitive environments. In this area, he reported that the revised recommendation (stringline)



challenges with using the stringline approach, existing topography, and other development patterns in the area.

In response to Vice Chair Hillgren's inquiry regarding topography, Ms. Rosenthal reported that their request considers the existing development pattern of surrounding lots, bearing in mind the severe topography to the north, lot sizes and relative distances from Hazel Drive. She also noted that 312 Hazel is a transitional lot more similar in topography to the lots to the south than the lots to the north.

Vice Chair Hillgren asked if the natural slope of Hazel Drive falls downward from East Coast Highway toward the ocean.

Ms. Rosenthal reported that she did not feel the slope of Hazel Drive made much difference, but rather, that Buck Gully was the defining feature in the topography.

Dr. Ou, property owner of 316 Hazel Drive, reported that his permit expired and that he was advised that it would not be reinstated. He asked if there has been any change in the existing codes and stated that the same staff that issued the permit informed him that it cannot be reissued.

Interested parties were invited to address the Planning Commission on this matter.

Gloria Tomer, owner of 320 Hazel, stated that she and her husband bought the house with an ocean view and expressed concerns over increased development in the area. She hoped that her view or access will not be negatively impacted.

Michelle Brown, realtor for Dr. Ou and resident of Corona Del Mar, addressed the risk of views being blocked by development and commented on the inequality of establishing stringlines based on neighbors existing development and the efforts and costs expended by the applicants in this matter. She urged the Planning Commission to establish equitable guidelines.

Jim Mosher addressed Coastal Land Use Plan policies and the constraints and lack of consistency with stringlines based on development on adjacent lots. He commented on the Coastal Commission's definition of "stringline" and felt that topography is not being respected with the revised recommendation by staff. He referenced the Coastal Act, the need for permits to remove vegetation and the need for consistency with the Zoning Code in effect in 1977 in order to qualify for a categorical exclusion order.

There being no others wishing to address the Planning Commission, Chair Toerge closed the public hearing.

Commissioner Kramer addressed the difficulty of the case and noted that he felt for the applicant. He then noted the Planning Commission's responsibility to implement the approved policy of the City Council rather than to suggest policy changes. He indicated his belief that the policy is not the best; however, the language is clear as to how it should be implemented.

Commissioner Tucker felt that the language matter in the General Plan and the Coastal Land Use Plan is unclear, that the language of the policy is inconsistent. He noted the language on stringlines and addressed setbacks, the language on the predominant line of development are, and related inconsistencies. He further noted that the policies in the General Plan and the Coastal Land Use Plan had not changed since they were adopted, that nothing took the place of Interim Criteria No. 7, which was by definition consistent with the General Plan and Coastal Land Use Plan and that there had been no new development on either side of the two properties before the Commission for years, thus no new structures from which to measure a stringline. He noted that staff had previously made a decision and found the development limit consistent with Criteria No. 7, and therefore, the General Plan policies. Thus, the City should be held to a consistent determination on the same lots. Commissioner Tucker noted that nothing has changed to make the previous determination invalid.

In response to an inquiry from Vice Chair Hillgren, Commissioner Tucker addressed considering similarly-situated structures, not just directly adjacent properties. He noted that the applicants' plans were previously approved and that nothing has changed to affect the previous determination that would make him think that this prior determination was erroneous. He noted that the General Plan Glossary, from which he read, had a



detailed definition for the phrase “predominant line of development” that would be wholly ignored if the concept of a stringline were to take precedent. Given that the inconsistency between the concept of a stringline and the concept of a predominant line of development appeared in the same policy, he did not believe it was proper to use a stringline type of analysis when the same houses under the same circumstances were previously approved by staff based upon a predominant line of development.

In response to an inquiry from Commissioner Kramer, Ms. Mulvihill clarified the approach considering that there are two properties. She also stated that when the development determination was made previously, it was made clear that it was being done under an interim ordinance, which would be terminated as soon as the Zoning Code was adopted and updated. She stated that it is staff's and the City Attorney's office position that to go beyond adjacent corners of existing structures, is not consistent with the General Plan or Coastal Land Use Plan.

Discussion followed regarding the application process for considering the two properties together as a whole.

Chair Toerge acknowledged the difficulty of the issues with this case and commented on the previous determination and the need for fairness to the community and consistency. He acknowledged that times change, codes change, and that development permits have time limits on them. He requested additional vertical view analysis of the two properties with proposed development. Chair Toerge identified that he would not have supported the prior Planning Director's determination had it come before the Planning Commission. Based on his review of the application, he identified that he felt staff's recommendation would be the most fair to the community.

**Motion** made by Chair Toerge and seconded by Commissioner Kramer and carried (6 – 1), to accept staff's recommendation and adopt a resolution, modifying the decision of the Community Development Director establishing canyon development stringlines for principal and accessory structures at 312 Hazel Drive pursuant to General Plan Policy NR23.6 and Coastal Land Use Plan Policy 4.4.3-18; and adopt a resolution, modifying the decision of the Community Development Director and establishing canyon development stringlines for principal and accessory structures at 316 Hazel Drive pursuant to General Plan Policy NR23.6 and Coastal Land Use Plan Policy 4.4.3-18, incorporating the correct meeting date into the resolutions.

Vice Chair Hillgren expressed his hope that the matter will result in an appropriate policy to address this matter and asked for a summary of an appropriate policy in a couple of sentences. He acknowledged the goal to be judicious about where development occurs and that he could not come to any conclusion as to how the prior development determinations were made.

Chair Toerge addressed an upcoming meeting of a General Plan Implementation Plan Committee where canyon development policies will be addressed.

AYES: Ameri, Brown, Hillgren, Kramer, Myers, and Toerge  
NOES: Tucker

## RECESS AND RECONVENE

Chair Toerge called for a recess at 9:29 p.m. The assembly reconvened at 9:40 p.m. with all Members, present.

### ITEM NO. 5 2014-2021 HOUSING ELEMENT UPDATE (PA2012-104) Site Location: Citywide

Chair Toerge reported receiving late correspondence regarding the aforementioned item and stated that he did not have sufficient time to review all of the information provided.

**Motion** made by Commissioner Kramer, to continue the item until the next regular meeting of the Planning Commission.

Commissioner Tucker reported reviewing the information and suggested discussing the issue.